



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2012-0392]

RIN 1625-AA00

Safety Zone; Belle Pass Dredge Operations, Belle Pass, Mile Marker 1.0 to Mile Marker (-0.2), Port Fourchon, Lafourche Parish, LA

AGENCY: Coast Guard, DHS.

ACTION: Temporary Final rule.

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SUMMARY: The Coast Guard is establishing a 500 foot temporary moving safety zone around the U.S. Government Contract Cutterhead Dredge MISSOURI H, while it conducts dredging operations in specified waters of Belle Pass, Port Fourchon, Louisiana. This action is necessary for the protection of persons and vessels on navigable waters during dredging operations. Entry into or transiting in this zone is prohibited to all vessels, mariners, and persons unless specifically authorized by the Captain of the Port (COTP) Morgan City or a designated representative.

DATES: Effective Date: this rule is effective in the CFR from [INSERT DATE OF PUBLICATION] until 8 a.m. on June 30,

2012. This rule is effective with actual notice for purposes of enforcement beginning 8 a.m. on May 2, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2012-0392]. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Ensign Nicholas Jones, U.S. Coast Guard; telephone (985) 857-8507 ext. 232, e-mail [Nicholas.B.Jones@uscg.mil](mailto:Nicholas.B.Jones@uscg.mil) . If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking

## A. Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because there is insufficient time to publish a NPRM. The Coast Guard received notice on April 27, 2012 from Port Fourchon Harbor Police that fishing vessels were actively fishing in the immediate vicinity of the Dredge MISSOURI H, creating an unsafe condition for mariners. This notice did not provide the time needed for the NPRM process. Publishing a NPRM would be impracticable and contrary to public interest because it would unnecessarily delay the immediate action needed to protect persons and vessels from potential safety hazards associated with dredging operations.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than

30 days after publication in the Federal Register. The Coast Guard received notice on April 27, 2012 from Port Fourchon Harbor Police that fishing vessels were actively fishing in the immediate vicinity of the Dredge MISSOURI H, creating an unsafe condition for mariners. This notice did not provide an opportunity to make this rule effective only upon a lapsing of 30 days post publication in the Federal Register. Making this rule effective only upon the lapse of 30 days post publication in the Federal Register would be contrary to public interest because it would unnecessarily delay the immediate action needed to protect persons and vessels from potential safety hazards associated with dredging operations.

B. Basis and Purpose

The purpose of this temporary safety zone is to protect persons and vessels during the dredging operations of the Dredge MISSOURI H. The Dredge MISSOURI H will work 24 hours a day, 7 days a week, and will deposit material using floating and submerged pipelines along the Gulf Shoreline of Belle Pass. In addition to the dredging equipment described above, there are numerous work and support vessels associated with the dredging operation. This dredging operation poses significant safety hazards to

both vessels and mariners operating in the vicinity of the Dredge MISSOURI H.

#### C. Discussion of Rule

The Coast Guard is establishing a 500 foot temporary moving safety zone around the Dredge MISSOURI H while it conducts dredging operations from Mile Marker 1.0 to Mile Marker (-0.2) located in Belle Pass, Port Fourchon, Louisiana. Entry into or transiting in this zone is prohibited to all vessels, mariners, and persons unless specifically authorized by the Captain of the Port (COTP) Morgan City or a designated representative.

The COTP Morgan City or a designated representative will inform the public through Broadcast Notice to Mariners of changes in the effective period for the safety zone. This rule is effective from 8 a.m. on May 2, 2012 until 8 a.m. on June 30, 2012.

#### D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

##### 1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning

and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The temporary safety zone listed in this rule will only restrict vessel traffic from entering or transiting within 500 feet of the Dredge MISSOURI H. The effect of this regulation will not be a significant regulatory action because: 1) this rule will only affect vessel traffic for a short duration; 2) vessels may request permission from the COTP to transit through the safety zone; and 3) the impacts on routine navigation are expected to be minimal. Notifications to the marine community will be made through Broadcast Notice to Mariners. These notifications will allow the public to plan operations around the affected area.

## 2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic

impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit in the affected portions of the Dredge MISSOURI H's proposed dredging areas. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: The zone is limited in size, is of short duration and vessel traffic may request permission from the COTP Morgan City or a designated representative to enter or transit through the zone.

If you are a small business entity and are significantly affected by this regulation, please contact Ensign Nicholas Jones, Marine Safety Unit Houma, at (985) 857-8507 ext. 232.

### 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### 4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.



## 6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

## 7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

## 8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### 9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### 10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

#### 11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

## 12. Energy Effects

This action is not a "significant energy action" under Executive order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

## 13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

## 14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a moving safety zone in effect for a limited period of time. The moving safety zone provides safety for the public while the Dredge MISSOURI H is conducting dredging operations. This rule is categorically excluded from further review under paragraph (34)(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion

Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

E. List of Subjects in 33 CFR Part 165

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165-- REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. A new temporary § 165.T08-0392 is added to read as follows:

§ 165.T08-0392 Safety Zone; Belle Pass Dredge Operations, Belle Pass, Mile Marker 1.0 to Mile Marker (-0.2), Port Fourchon, Lafourche Parish, LA

(a) Location. The following area is a moving safety zone: all waters 500 feet around the Dredge MISSOURI H, while it conducts dredging operations from Belle Pass Mile Marker 1.0 to Mile Marker (-0.2).

(b) Effective date. This rule is effective from 8 a.m. on May 2, 2012 until 8 a.m. on June 30, 2012.

(c) Periods of enforcement. This rule will be enforced with actual notice from 8 a.m. on May 2, 2012 until 8 a.m. on June 30, 2012. The Captain of the Port Morgan City or a designated representative will inform the public through Broadcast Notice to Mariners of the enforcement period for the safety zone as well as any changes in the planned schedule.

(d) Regulations. (1) In accordance with the general regulations in 33 CFR part 165, subpart C, entry into this zone is prohibited unless authorized by the Captain of the Port Morgan City or a designated representative.

(2) Vessels requiring entry into or passage through the Safety Zone must request permission from the Captain of the Port Morgan City, or a designated representative. They may be contacted on VHF Channel 13 or 16, or by telephone at (985) 857-8507.

(3) Mariners should contact the Dredge MISSOURI H, on VHF-FM Channel 13 or 16 prior to the arrival at the safety zone for permission to enter or transit through the safety zone.

(4) If permission is granted, all persons and vessels shall comply with the instructions of the Captain of the

Port or a designated representative.

(5) All persons and vessels shall comply with the instructions of the Captain of the Port Morgan City and designated on-scene patrol personnel. On-scene patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

(e) Informational Broadcasts. The Captain of the Port Morgan City or a designated representative will inform the public through Broadcast Notice to Mariners of the enforcement period for the safety zone as well as any changes in the planned schedule.

Dated: May 1, 2012

J. C. Burton,  
Captain, U.S. Coast Guard  
Captain of the Port Morgan City, Louisiana

[FR Doc. 2012-13031 Filed 05/29/2012 at 8:45 am;  
Publication Date: 05/30/2012]